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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LAKAYSHA REDD, Defendant and Appellant.	B211869 (Los Angeles County Super. Ct. No. PA057443)

APPEAL from a judgment of the Superior Court of Los Angeles County, Burt Pines, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Lakaysha Redd was convicted by a jury of vehicular manslaughter and related counts arising from a fatal automobile accident during a high speed chase. She appeals, claiming there is insufficient evidence to support several of the convictions, the sentence must be set aside, and the court erred by failing to grant two motions to dismiss. We reject her contentions and affirm the judgment.

BACKGROUND

As a result of the 17-year-old defendant's high speed automobile pursuit of her former love interest, Shayla Phillips, Phillips was killed on May 27, 2006, when her vehicle collided with a truck, car, and bus after running a red light at over 100 miles per hour. The other three drivers (Henry Gasbarri, Richard Jajja, Nabel Massoud) and two bus passengers (Pablo Sanchez, Salustia Diaz) were injured in the collision. Defendant fled the scene in her vehicle after observing the collision.

I. Defendant's Interview Statements

During questioning by Los Angeles Police Department detectives, defendant admitted pursuing Phillips through several red lights at speeds above 100 miles per hour.[1] Defendant explained that she had initiated the pursuit because Phillips, who had not returned her phone calls, had refused to pull over, and her "heart was broken" over their failed relationship. Defendant initially admitted throwing the bottle that had shattered Phillips's rear window during the pursuit, but later stated that "Alexis" had thrown the bottle.

In response to a detective's suggestion that Phillips was fleeing out of fear because of the thrown bottle and high speed chase, defendant stated: "That's nothing. I did so much more stuff to her. And for her to be scared now, no. Because she knows she is in the wrong. Why would (inaudible) be scared of somebody (inaudible). [¶]

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[1] The transcripts and recordings of defendant's interviews were received into evidence at trial.

DETECTIVE KEYSER: Then why was she doing over a hundred miles an hour and why . . . . [¶] DEFENDANT: Because she knows she was in the wrong. And she knows that when she stopped I was going to mess her up. I was going to sock her in her face and (inaudible) fight. . . . She knew we was going to fight because I told her . . . . She already know I was going to start hitting her." "DETECTIVE KEYSER: Maybe she just didn't want to see you and she's trying to get away. [¶] DEFENDANT: Well she didn't want to see me so bad, that's why she's dead now. She risked her life not to see me."

Although defendant stated that Phillips knew that defendant was "going to sock her in her face and . . . fight," defendant denied that Phillips was afraid of her ("22 year old girl, woman is running away from a 17 year old girl"; "I cannot beat her up even if I tried"). When a detective pointed out that there were "two of you in the car," defendant replied, "my friend wasn't going to do anything to her." The detective then inquired, "But did [Phillips] know that? Do you think she knew that?" Defendant answered, "She wasn't scared."

Defendant stated that as Phillips was running the red light before the accident occurred, defendant "was slowing down" in order to turn right and abandon the pursuit, because she knew it was dangerous. "DETECTIVE KEYSER: So you turned when she got hit? . . . [¶] DEFENDANT: Yes . . . ." "DETECTIVE DOERBECKER: How fast do you think she was going when she went through the intersection? [¶] [DEFENDANT]: 130." "DETECTIVE DOERBECKER: How fast were you going? [¶] [DEFENDANT]: 110. [¶] DETECTIVE KEYZER: But not when you made the turn, you slowed down to make the turn, right? [¶] [DEFENDANT]: Yes." "DETECTIVE KEYZER: . . . You knew someone could get hurt, right? [¶] [DEFENDANT]: Yes, that's why I stopped. . . . But I didn't know she was gonna get hit by that car. [¶] DETECTIVE DOERBECKER: You didn't know she was going to run the red light, but she ran a couple of lights before that, right? [¶] [DEFENDANT]: Yes. [¶] DETECTIVE KEYZER: You knew what you were doing was dangerous, someone could have got hurt, right? [¶] [DEFENDANT]: Right."

II. Phillips's 911 Calls

During the pursuit, Phillips made two 911 calls in which she stated that defendant and another female were pursuing her in a grey 2005 Chevy Trailblazer.[2] Phillips reported that "they just threw a bottle in the back of my window and they're following me right now." "It's like they're really following me, too. Like, I got to run red lights and all that stuff because they keep throwing stuff at my car." "I'm on, uh, Plummer and uh (inaudible) . . . through a red light right now." Phillips explained that defendant was following her "[b]ecause I . . . I don't want to be with her." "Um, I ain't got no threats, but she kept calling and kept calling, I haven't been answering my phone . . . so I mean I have not talked to her like a month."[3]

After Phillips's first 911 call was dropped, she made a second 911 call in which she stated, "Right now I'm on the 118 freeway and they're still following me. They threw a bottle in the back of my car and I need some help soon because I'm running out of gas." "Uh, I got to get off the freeway; I'm running, I'm running out of gas. . . . I just got off on, uh, Balboa and I . . . I can't get gas because they like really following me." ". . . I can't stop and get gas because they're on my tail." ". . . I got to run red lights, this is really dangerous." "I'm trying to drive safe. The thing about it is, I . . . I'm a commercial driver's license. I have my Class A license. I'm not trying to lose my license. I'm supposed to be on my way to work." "[T]hey threw a bottle. I don't know what they threw. They threw something that broke out the back of my window."

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[2] The transcripts and recordings of Phillips's 911 calls were received into evidence at trial.

[3] Cell phone records showed that defendant had made numerous calls to Phillips before the collision. According to the Attorney General's brief, "Over less than a 24-hour period, the calls appellant placed to Reynolds [Phillips's girlfriend] and Phillips occupied four pages of her phone bill; during the early morning hours of May 27 she placed calls nearly every minute to one of the two numbers, including 32 calls to Reynolds's phone, with the exception of the 66-minute period between 2:32 a.m. and 3:38 a.m. while she vented to [a friend,] Keli White. [Record citations omitted.]"

"[T]hey going through like the different lanes, all that. I was trying to get to . . . Sepulveda [to a police station]." The call abruptly ended when the collision occurred.

III. Other Evidence

According to the investigating officer, John Doerbecker, the evidence showed that defendant had chased Phillips for about 10 minutes and over a distance of about 12 to 15 miles. Joseph Barr, the prosecution's expert witness, testified that based on his examination of the wreckage, the collision had occurred at speeds of 60 to 120 miles per hour, which was consistent with the lack of skid marks from Phillips's vehicle.

According to eyewitness Ashley Snyder, Phillips and defendant went around her car in the center divider just moments before the collision, and were traveling at such high speeds that her car was "jolted." Snyder testified that Phillips and defendant were driving "right behind each other," separated only by a distance of about three feet. Similarly, eyewitness Don Lautenschlager testified that defendant and Phillips were "driving like nuts, because they were really right on each — one was right on the other's tail."

IV. The Verdict and Stipulated Sentence

As a result of Phillips's death during the high speed chase, defendant was charged with both murder (Pen. Code, § 187, subd. (a) [count 1])[4] and vehicular manslaughter (§ 192, subd. (c)(1) [count 4]). Although the jury hung on the murder count, for which a mistrial was declared, it returned a guilty verdict on the vehicular manslaughter count. The jury also found defendant guilty of stalking (§ 646.9, subd. (a) [count 3]), misdemeanor assault as a lesser offense of assault with a deadly weapon, of which she was acquitted (§§ 240, 245, subd. (a)(1) [count 7]), and leaving the scene of an accident (Veh. Code, § 20001, subd. (a) [count 10]). As to count 3 (stalking), the jury found true the allegation of personal infliction of great bodily injury under circumstances involving

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[4] All further undesignated statutory references are to the Penal Code.

domestic violence. (§ 12022.7, subd. (e).) As to count 4 (vehicular manslaughter), the jury found true the allegation of fleeing the scene of a crime. (Veh. Code, § 20001, subd. (c).) The jury acquitted defendant of count 5, throwing a substance at a vehicle. (Veh. Code, § 23110, subd. (b).)[5]

As to the three injured drivers and two injured passengers, the jury convicted defendant of five counts of reckless driving with bodily injury. (Veh. Code, § 23104, subd. (a) [counts 14-18].)

Pursuant to a negotiated disposition, the trial court dismissed the murder charge in return for: (1) defendant's acceptance of a 14-year, 2-month prison sentence, which the parties believed to be the maximum term for the counts on which jury convictions were obtained; (2) defendant's waiver of half of her presentence custody credits; and (3) the payment of numerous fines and restitution. It was further stipulated that defendant did not waive her right to appeal the counts on which she was convicted by a jury.

DISCUSSION

I. Sufficiency of the Evidence

"In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Reilly* (1970) 3 Cal.3d 421, 425; accord, *People v. Pensinger* (1991) 52 Cal.3d 1210, 1237.) The same standard applies when the conviction rests primarily on circumstantial evidence. (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.) Although it is the jury's duty

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[5] The trial court previously had dismissed count 6, making a criminal threat. (§§ 422; 1118.1.)

to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. (*Ibid.*) '"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]"' (*People v. Thomas* (1992) 2 Cal.4th 489, 514.)" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

Defendant seeks reversal of the convictions of vehicular manslaughter (count 4), leaving the scene of an accident (count 10), and reckless driving with bodily injury (counts 14-18), on the ground that her conduct was not a substantial factor in causing the collision. In particular, she argues that Phillips's "reaction in speeding off at 100 miles per hour, running red lights and generally driving completely recklessly in an apparent attempt to run away from facing appellant, [whom] she had avoided for weeks, was 'so unusual, abnormal or extraordinary that it could not have been foreseen.' (*People v. Schmies* [(1996)] 44 Cal.App.4th 38, 51-52.)"[6] We are not persuaded.

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[6] On this point, the jury received the following instruction: "There may be more than one cause of injury or death. An act causes injury or death only if it is a substantial factor in causing the injury or death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the injury or death. [¶] The failure of Shayla Phillips or another person to use reasonable care may have contributed to the injury or death. But if the defendant's act was a substantial factor causing the injury or death, then the defendant is legally responsible for the injury or death even though Shayla Phillips or another person may have failed to use reasonable care. [¶] On the other hand, where there is an intervening act, a defendant may be absolved of liability if that act is a superseding cause. A superseding cause is an independent event that intervenes in the chain of causation, producing harm of a kind and degree that is too remote and far beyond the risk the defendant should have foreseen. A dependent intervening cause does not relieve the defendant of criminal liability. A dependant intervening cause is one that is a normal and reasonably foreseeable result of the defendant's original act. [¶] If you have a reasonable doubt whether the defendant's act caused the injury or death, you must find her not guilty." (CALCRIM No. 620.)

Given Phillips's failure to return defendant's phone calls during the month before her death, her failure to pull over on the date in question was consistent with her previous behavior and, therefore, reasonably foreseeable. As defendant (or her passenger) shattered Phillips's rear window and followed her closely at high speeds, leaving only a slight distance between the vehicles, weaving in and out of traffic, and running several red lights, defendant should have foreseen the reasonable possibility of a collision. Indeed, by her own admission, defendant knew that she was committing a highly dangerous act: "DETECTIVE KEYZER: You knew what you were doing was dangerous, someone could have got hurt, right? [¶] [DEFENDANT]: Right." Under the facts of this case, Phillips's reaction to defendant's aggressive and threatening actions was not so unusual, extraordinary, or abnormal that it could not have been foreseen. (See *People v. Schmies*, *supra*, 44 Cal.App.4th at pp. 51-52.) Contrary to defendant's assertion, the absence of published cases involving high speed chases with facts similar to this case does not compel a different result.

In light of our determination, we necessarily reject the related contention that the evidence fails to support the convictions on counts 10 (leaving the scene of an accident) and 14 through 18 (reckless driving causing bodily injury). Although defendant argues that she had abandoned the pursuit and slowed to a safe speed as Phillips continued speeding through the intersection, the evidence supports the jury's determination that any purported abandonment came too late for Phillips to avoid the collision that followed.

Defendant also challenges the sufficiency of the evidence to support her conviction of stalking. Section 646.9, subdivision (a) provides in relevant part: "Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking."

The evidence showed that defendant had engaged in harassing behavior by repeatedly making unwelcome phone calls to Phillips during the days and hours preceding her death. The harassing behavior continued and culminated in the dangerous

high speed chase that resulted in the fatal collision. Accordingly, the evidence amply supports the verdict on the stalking allegation.

II. The Stipulated Sentencing Agreement

As previously discussed, the trial court dismissed the murder charge in return for a stipulated prison sentence, a partial waiver of presentence custody credits, and the payment of numerous fines and restitution. Although the agreement specified that defendant reserved her right to appeal the counts on which a jury conviction was obtained, the agreement did not state that she reserved the right to challenge the denial of her motions to dismiss the murder charge under sections 1118.1 and 1385.

Defendant now seeks to overturn the stipulated sentencing agreement on the ground that the dismissal of the murder charge failed to supply proper consideration for the agreement. She argues that because vehicular manslaughter is a lesser included offense of murder, and because the jury was discharged without rendering a verdict on the murder charge, she was not subject to retrial for murder and, therefore, not subject to the stipulated agreement that she mistakenly entered. She also challenges the denial of her motions to dismiss the murder charge under sections 1118.1 and 1385.

The Attorney General responds that these contentions were waived when plaintiff voluntarily entered the stipulated sentencing agreement specifically to obtain the dismissal of the murder charge, thus indicating her agreement that the charge was valid. (See *People v. Shelton* (2006) 37 Cal.4th 759, 767; *People v. Segura* (2008) 44 Cal.4th 921, 930.)

We conclude that defendant's contention of mistake lacks merit. As acknowledged by defendant in her opening brief, the California Supreme Court held that vehicular manslaughter is not a lesser included offense of murder in *People v. Sanchez* (2001) 24 Cal.4th 983, and we decline her invitation to disregard that ruling. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456.) And because defendant did not reserve the right to challenge the denial of her motions to dismiss under sections 1118.1 and 1385, no further discussion is warranted.

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.